

STATE OF MICHIGAN
COURT OF APPEALS

KIM M. MARCHEWITZ and MICHAEL L.
MARCHEWITZ,

UNPUBLISHED
October 25, 2002

Plaintiffs-Appellants,

v

MICHAEL DAVID MINER and FLOYD
WAYNE MINER,

No. 233485
Charlevoix Circuit Court
LC No. 99-004919-NI

Defendants-Appellees.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right a judgment of no cause of action entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs alleged that Kim M. Marchewitz was injured when her vehicle collided with a vehicle driven by defendant Michael David Miner and owned by defendant Floyd Wayne Miner.¹ Plaintiffs filed suit, seeking damages for mental anguish, pain and suffering, wage loss, medical treatment, and loss of consortium. During voir dire several potential jurors expressed opposition to various types of damages, including damages for mental anguish and loss of consortium. These jurors indicated that it was possible they would have difficulty considering a claim for such damages; however, no potential juror stated that he or she would not abide by the court's instruction to follow the law in deciding the case.

Plaintiffs sought to dismiss six potential jurors for cause on the ground that those persons had indicated opposition to certain types of damages sought in the case. The trial court denied five of plaintiffs' six challenges, noting both that the potential jurors were speaking without having been instructed on the law, and that they had indicated that they would follow the law. Plaintiffs used their three peremptory challenges to remove three of the five potential jurors to whom they objected.

¹ Floyd Wayne Miner died prior to trial.

Trial in this case lasted several days.² In a 6-1 decision, the jury returned a verdict of no cause of action. The jury employed a verdict form containing five questions. In response to Question 1, was defendant Miner negligent, the jury answered “yes.” In response to Question 2, was Kim Marchewitz injured, the jury answered “no.” In accordance with the instruction on the form, the jury did not consider any further questions. Thus, the jury had no occasion to consider the issue of damages.

We review a trial court’s decision to deny a challenge for cause for an abuse of discretion. Reversible error occurs when the record indicates that: (1) the court improperly denied a challenge for cause; (2) the aggrieved party had exhausted all peremptory challenges; (3) the party demonstrated a desire to excuse another summoned juror; and (4) the juror whom the party later wished to excuse was objectionable.

The determination whether a trial court improperly denied a challenge for cause is made in accordance with whether a juror was excusable under MCR 2.511(D). *Poet v Traverse City Osteopathic Hosp*, 433 Mich 228, 236, 241; 445 NW2d 115 (1989); *Jalaba v Borovoy*, 206 Mich App 17, 23-24; 520 NW2d 349 (1994). If a potential juror has expressed a strong opinion but has maintained that he or she can be impartial, the trial court must balance its discretionary function against its obligation to protect each party’s right to a fair trial. *Harville v State Plumbing & Heating, Inc*, 218 Mich App 302, 321; 553 NW2d 377 (1996).

Plaintiffs argue that the trial court abused its discretion by refusing to grant all six of their challenges for cause. We disagree and affirm the judgment of no cause of action. Each of the five remaining jurors indicated that, personal feelings notwithstanding, he or she would apply the law of damages as instructed by the court. Significantly, none of these jurors stated that he or she could not render an impartial verdict on the issues of negligence or occurrence of injury. MCR 2.511(D)(4). In addition, no juror stated that he or she had negative feelings regarding a request for damages for lost wages, medical treatment, etc.

The jury found that defendant was negligent, but that Kim Marchewitz did not sustain injuries. The jury did not consider damages. It had no occasion to demonstrate that it was unwilling to award certain types of damages notwithstanding a finding that plaintiffs sustained injuries. Plaintiffs’ implied assertion that the presence of the objected-to jurors tainted the entire verdict is based wholly on speculation. Plaintiffs have not demonstrated that the presence of the remaining two jurors to whom they objected denied them a fair trial. *Harville, supra*. Under the circumstances, plaintiffs have not established that the trial court abused its discretion by denying five of their six challenges for cause. *Poet, supra*, 236.

² Plaintiffs have not provided a transcript of the trial itself. They have supplied a transcript of the voir dire and the announcement of the verdict. Defendants’ brief indicates that plaintiffs received permission from the trial court to appeal on a partial transcript. Nothing indicates that this Court requested further transcripts.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra